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5 UNITED STATES DISTRICT COURT

6 DISTRICT OF NORTHERN CALIFORNIA

7

8 PHIL DESCHAMPS

Case No.: 3:22-cv-00928-VC

9 Plaintiff,

10 vs.

11 SAUSALITO ET AL,

12 Defendant

13 Attorney Name

14 PROPOSED ORDER FOR TRO AND
15 PRELIMAINRY INJUNCITON

16 **Introduction**

17 Whereas on March 8th, around 12pm, Lieutenant Gregory of the Sausalito Police
18 Department approached me and told me to tear down tent and subject my cats to
19 unacceptably dangerous conditions as described in the complaint, I am asking the court to
20 immediately enjoin the City of Sausalito from destroying my tent and forcing my cats to
21 live in a small box with holes in it as is the only proposal offered by the city.

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24 **RELIEF SOUGHT**

25 Pursuant to Local Rule 65.1(a) plaintiffs move for a temporary restraining order
26 against Defendants and each of them to halt the expulsion of homeless persons from
27 Steamer Landing Park, where approximately 25 people have been camping for the past

1 many months. Specifically, plaintiffs seek a Temporary Restraining Order and
2 Preliminary Injunction against the Defendants criminalization of homelessness pursuant
3 to Petaluma Municipal Code 13.28.010 and the misapplication of Penal Code 602 (h); “
4 through (o) and Penal Code 647(e), and thereby preventing Defendants from removing
5 Plaintiffs and all similarly situated persons, from Steamer Landing Park and other
6 homeless encampments and essentially prohibiting them from camping anywhere in the
7 City of Petaluma.

8 A TRO is necessary to prevent the irreparable harm to homeless Plaintiffs, prior
9 to this Court having the opportunity to make a decision on Plaintiffs motion for
10 preliminary injunction.

11 On October 2nd, 2021 officials of the City went to Steamer Landing and distributed
12 handbills with excerpts from the above code sections and caused great consternation and
13 fear in the camp.

14 As of October 5th, the City could at any time come into the camp, force residents
15 into unsafe shelters where they will be exposed to COVID-19, violence, loss of privacy,
16 and deterioration of their mental and physical wellbeing.

17 **Standard of Review**

18 In considering an application for a preliminary injunction under Rule 65 of the Federal
19 Rules of Civil Procedure, courts in the Ninth Circuit look to the following factors: a) The movant
20 has shown a likelihood of success on the merits; b) there is a likelihood that the movant will
21 suffer irreparable harm in absence of a preliminary injunction c) the balance of equities tip in the
22 movants favor; d) The injunction is in the public interest. *Stormance inc v. Selecky*, 586 F.3d
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1 1109, 1127 (9th Cir. 2009). Also see *Idaho v Coeur d'Alene Tribe*, 794 F.3d 1039, 1046 (9th Cir,
2 2015) quing from *Pom Wonderful LLC v Hubbard*, 775 F.3d 1118,1124 (9th Cir.2014)

3 Under the sliding scale approach adopted by the Ninth Circuit in *Alliance for the Wild*
4 *Rockies v. Cottrell*, 632 F.3d 1127, Courts must weigh these factors using a “sliding scale”
5 approach such that where there are “serious question going on the merits” a preliminary
6 injunction may still be issued so long as “the balance of hardships tips sharply in the plaintiffs
7 favor and the other two factors are satisfied” *Short v Brown*, 893 F.3d 671,675 (9th
8 Cir.2018)(quoting *Alliance for the Wild Rockies v Cottrell*, 632 F.3d 1127, 1135 (9th Cir.2011)
9 To determine whether to issue a TRO, the courts in the Ninth Circuit apply the same analysis
10 used to evaluate a motion for preliminary injunction *McCarthy v Servis One, Inc.* 2017 U.S.
11 Dist. LEXIS 32622 at 9-10(N.D. Cal. Mar. 7 2017)

12 Here, Plaintiffs *Ex Parte* Application for a Temporary Restraining Order and Preliminary
13 Injunction, raises serious questions including the legality, under the Federal and California State
14 Constitutions of Defendants plan to destroy Phil Deschamps campsite and

15 16 17 18 19 20 **Irreparable Harm**

21 The Plaintiffs and other residents of the camp will suffer irreparable harm if they are
22 made to move their homes on October 6th. They will have nowhere to go and will have to
23 wander around Petaluma in order to find a new place to put up their tents. This will expose them
24 to parts of the community potentially infected with COVID-19, whereas the current camp has
25 been a shelter from the wider community and has not had a COVID-19 infection run through it.
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2 **Violation of Robert T. Stafford Disaster Relief and Emergency Assistance Act 42 U.S.C. §§**

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4 **5121-5207**

5 On February 10th, the Sausalito City Council approved the “Proclamation of A Local Emergency
6 By Director of Emergency Services” attached in Exhibit E.

7 Whereas local emergencies are in part governed by the Robert T Stafford Disaster Relief and
8 Emergency Assistance Act, and that act and federal guidance states during states of emergency
9 accommodations must be made for pets in section 42 U.S.C. §§ 5121-5207

10 Therefore, the city by depriving me of my rights as someone who is a victim of a state of
11 emergency as declared in that proclamation.

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14 **State-Created Danger**

15 In addition, serious questions arise regarding **state-created danger by way of increasing**
16 **of irreparable harm and possible death of my cats which will cause me extreme emotional**
17 **anguish.**

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20 While most courts have held that there may be no fundamental right to housing, the Ninth
21 Circuit recognizes liability under substantive due process where a state or local official act to
22 place a person in a situation of known danger with deliberate indifference to their personal or
23 physical safety *Kennedy v City of Ridgefield*. 439 E 3d 1055 (9th Cir. 2006) “[D]eliberate
24 indifference is astringent standard of fault, requiring proof that a municipal actor disregard a
25 known or obvious consequence” *Board of County Com’rs of Bryan County, Okl v Brown*, 520
26 U.S. 397

“In examining whether [the city] affirmatively places an individual in danger, a court does not look solely to the agency of the individual, nor does it rest its opinion on what options may or may not have been available to the individual. Instead, [the court must] examine whether [the city] left the person in a situation that was more dangerous than the one in which they found him” *Kennedy*, 439, F3d at 1062 (citations omitted) See also, Northern District Judge Susan van Keulen’s Order January 20, 2021 granting Plaintiffs Ex Parte Application for Preliminary Injunction in the case of *Santa Cruz Homeless Union et al v Martin Bernal, City of Santa Cruz et al* Case No. 20-cv-09425-SVK

While generally cats are considered as chattel, they are still living beings and are entitled to some dignity and respect as has is held in many laws preventing cruelty to animals. By putting my cats in danger, it also put me at risk of severe emotional anguish if they perish as a result of the cities actions. State created danger doctrine applies.

Balance of Equities

The balance of equities tips sharply in the favor of the Plaintiffs. In a similar case outcome for the recent decision in *Where Do We Go Berkeley v. California Department of Transportation (Caltrans)* the Northern District of California's Judge Chen granted a TRO and then granted in part the Plaintiff's preliminary injunction for six months. The order stopped Caltrans from clearing an encampment in Emeryville, and compelled Caltrans to allow some of its property to be accessible for unhoused people to have domiciles.

Here the public interest – which includes the interest of the homeless who it is often forgotten are also members of the public – is clearly served by enjoining enforcement of the upcoming displacement on October 6th

Prayer For Relief

1. Relief is prayed that the court grant the proposed order for TRO to immediately enjoin defendants from tearing down my tent, and displacing my cats.
2. That my cats not be forced to live inside of a box.
3. That be permitted to have the area directly behind his platform for a fenced in area for his cats.
4. That the city immediately meet and confer with me to find an equitable solution and stop harassing me without any form of redress or complaint process for the behavior of their employees.ß